

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

MICHAEL J. LEE,

Plaintiff,

-against-

CYNTHIA BRANN, New York City Department of Corrections Commissioner; PATSY YANG, Health Director Commissioner; MARGARET EGAN, Board of Correction Executive Director,

Defendants.

USDC SDNY
DOCUMENT
ELECTRONICALLY FILED
DOC #: _____
DATE FILED: 11/17/2020

20-CV-8407 (GBD) (SDA)

ORDER OF SERVICE

STEWART D. AARON, United States Magistrate Judge:

Plaintiff, currently incarcerated at the Vernon C. Bain Center, brings this *pro se* action under 42 U.S.C. § 1983, alleging that jail officials are failing to protect him from contracting COVID-19.¹ By order dated October 27, 2020, the Court granted Plaintiff's request to proceed without prepayment of fees, that is, *in forma pauperis*.²

ORDER OF SERVICE

A. Defendants Yang and Egan

Because Plaintiff has been granted permission to proceed IFP, he is entitled to rely on the Court and the U.S. Marshals Service to effect service. *Walker v. Schult*, 717 F.3d. 119, 123 n.6 (2d Cir. 2013); *see also* 28 U.S.C. § 1915(d) (“The officers of the court shall issue and serve all process . . . in [IFP] cases.”); Fed. R. Civ. P. 4(c)(3) (the court must order the Marshals Service to serve if the plaintiff is authorized to proceed IFP)). Although Rule 4(m) of the Federal Rules of

¹ Plaintiff filed this complaint with 49 other detainees. On November 9, 2020, the Court severed the matter into separate cases. Lee will be the only plaintiff in this matter.

² Prisoners are not exempt from paying the full filing fee even when they have been granted permission to proceed *in forma pauperis*. See 28 U.S.C. § 1915(b)(1).

Civil Procedure generally requires that the summons and complaint be served within 90 days of the date the complaint is filed, Plaintiff is proceeding IFP and could not have served the summons and complaint until the Court reviewed the complaint and ordered that a summons be issued. The Court therefore extends the time to serve until 90 days after the date the summons is issued. If the complaint is not served within that time, Plaintiff should request an extension of time for service. *See Meilleur v. Strong*, 682 F.3d 56, 63 (2d Cir. 2012) (holding that it is the plaintiff's responsibility to request an extension of time for service); *see also Murray v. Pataki*, 378 F. App'x 50, 52 (2d Cir. 2010) ("As long as the [plaintiff proceeding IFP] provides the information necessary to identify the defendant, the Marshals' failure to effect service automatically constitutes 'good cause' for an extension of time within the meaning of Rule 4(m).").

To allow Plaintiff to effect service on Defendants Yang and Egan through the U.S. Marshals Service, the Clerk of Court is instructed to fill out a U.S. Marshals Service Process Receipt and Return form ("USM-285 form") for each of these defendants. The Clerk of Court is further instructed to issue a summons and deliver to the Marshals Service all the paperwork necessary for the Marshals Service to effect service upon these defendants.

Plaintiff must notify the Court in writing if his address changes, and the Court may dismiss the action if Plaintiff fails to do so.

B. Defendant Brann

The Clerk of Court is directed to notify the New York City Department of Correction and the New York City Law Department of this order. The Court requests that Commissioner Cynthia Brann waive service of summons.

CONCLUSION

The Clerk of Court is directed to electronically notify the New York City Department of Correction and the New York City Law Department of this order. The Court requests that Defendant Brann waive service of summons.

The Clerk of Court is further instructed to complete the USM-285 forms with the addresses for Yang and Egan and deliver all documents necessary to effect service to the U.S. Marshals Service.

The Clerk of Court is also directed to mail a copy of this order to Plaintiff along with an information package.

SO ORDERED.

Dated:

New York, New York

November 17, 2020



STEWART D. AARON
United States Magistrate Judge

DEFENDANTS AND SERVICE ADDRESSES

1. Patricia Yang
Senior Vice President for Correctional Health Services
for NYC Health + Hospitals
55 Water Street
18th Floor
New York, New York 10041

2. Margaret Egan
Executive Director of the Board of Correction
1 Centre Street
Room 2213
New York, New York 10007